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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSHUA W. BLOCKER,

Defendant and Appellant.

C069753

(Super. Ct. No. 08F08893)

Defendant Joshua W. Blocker pled no contest to eight counts of second degree robbery and admitted strike, serious felony, and personal use of a deadly weapon allegations. The trial court sentenced defendant to a stipulated term of 30 years in state prison.

On appeal, defendant contends the abstract of judgment contains an erroneous reference to a restitution order that was not part of the trial court's pronouncement of judgment. We remand for a restitution hearing.

FACTS

On October 12, 2008, defendant used a BB gun to take \$300 from the clerk at an Express Stop market in Sacramento. That same day, he took \$229 and cigarettes from a Chevron station after threatening to shoot the attendant.

Defendant committed two robberies on October 13, 2008. He threatened an employee of a Shell gas station, who gave him \$280 from the cash register and 12 packs of cigarettes. He threatened an employee at a Sacramento Stop & Shop, who gave him between \$200 and \$300 from the cash register.

Defendant committed four robberies on October 15, 2008. He took \$621.56 from the cash register attendant at a Union 76 station in Sacramento. He demanded money from an employee at a Sacramento Valero station, who gave him \$350 from the cash register. Defendant threatened an employee at a Sacramento Food Stop, and got \$80 from the cash register and \$90 of the employee's money. Defendant threatened an employee of an Mini Mart in Sacramento, who gave defendant \$200 and two Swisher cigars.

DISCUSSION

The probation report identified a total of \$1,944.50 in restitution for the victims of defendant's crimes. The abstract of judgment and minute order refer to a \$1,944.50 restitution order, but the trial court never addressed restitution when it pronounced sentence.

Defendant asks us to strike the victim restitution orders. The People agree that the minute order and abstract are

improper, but ask us to remand the matter to the trial court for a restitution hearing. In his reply brief, defendant asserts that the People's failure to request restitution in the trial court forfeits the People's right to seek restitution.

We agree with the parties that the clerk could not use the minutes and abstract to supply a restitution order that was not part of the trial court's pronouncement of judgment. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185 [oral judgment controls over abstract and minutes]; *People v. Zackery* (2007) 147 Cal.App.4th 380, 387-388 [clerk cannot supplement the judgment through a minute order or abstract].) However, we reject defendant's contention that the People forfeited the right to seek victim restitution by failing to raise the matter in the trial court.

Article I, section 28(b)(13)(B) of the California Constitution provides in relevant part: "Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss." Victim restitution for economic loss is mandatory (Pen. Code, § 1202.4, subd. (a)(1)) and the court must order full victim restitution "unless it finds compelling and extraordinary reasons for not doing so, and states them on the record." (*Id.*, § 1202.4, subd. (f).)

In this case, the trial court failed to orally impose victim restitution and did not find compelling and extraordinary reasons on the record. This omission was constitutionally unlawful and could not be forfeited by the district attorney. (*People v. Smith* (2001) 24 Cal.4th 849, 852 [unauthorized

sentence not subject to forfeiture rule]; see Pen. Code, § 1202.46 ["a victim, the district attorney, or a court on its own motion" may request "correction, at any time, of a sentence when the sentence is invalid due to the omission of a restitution order or fine without a finding of compelling and extraordinary reasons pursuant to Section 1202.4"].) Accordingly, we shall strike the references to the restitution order in the minute order and abstract and remand for a restitution hearing.

DISPOSITION

The trial court is directed to delete the references to the restitution order in the minute order and abstract, hold a restitution hearing, prepare an amended minute order and abstract reflecting the results of that hearing, and forward a copy of the corrected abstract to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

_____, ROBIE, Acting P. J.

We concur:

_____, BUTZ, J.

_____, MURRAY, J.